

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On Its Own Motion)	
)	Docket No. 01-0539
Implementation of Section 13-712(g))	
of the Public Utilities Act)	

REBUTTAL TESTIMONY OF

JASON P. HENDRICKS

ON BEHALF OF

ILLINOIS RURAL COMPETITIVE ALLIANCE

JULY 16, 2002

1 **Q. Please state your name and business address.**

2 A. My name is Jason P. Hendricks and my business address is 3220 Pleasant Run,
3 Springfield, IL 62707.

4
5 **Q. Are you the same Jason P. Hendricks who filed direct testimony on behalf of the**
6 **Illinois Rural Competitive Alliance (IRCA)?**

7 A. Yes.

8
9 **Q. What is the purpose of your rebuttal testimony?**

10 A. The purpose of my rebuttal testimony is to respond to the testimonies of witness for
11 Citizens Telecommunications Company of Illinois (“Citizens”). In particular, I oppose
12 Citizens’ proposal to allow Level 2 carriers to file their own wholesale service quality
13 plans and Citizens’ proposals to weaken the wholesale standards that apply to Level 2
14 Carriers.¹

15
16 General Responses to Citizens

17 **Q. Please describe your understanding of the process that led to Staff’s proposal and**
18 **how it would apply to Citizens?**

19 A. Last summer, the Illinois General Assembly passed HB 2900, which included the
20 following provision:

¹ Citizens has proposed numerous changes to Staff’s proposal. A non-response to certain Citizens’ proposals should not be construed to mean that I support those proposals. Correspondingly, a non-response to the proposals of any other party should not be construed to mean that I support those proposals.

21 *The Commission shall establish and implement carrier to carrier wholesale*
22 *service quality rules and establish remedies to ensure enforcement of the rules.*
23 *(220 ILCS 5/13-712(g))*
24

25 Beginning on August 30, 2001, Staff led numerous workshops in order to elicit
26 comments from interested parties on this provision. The majority of workshop
27 participants soon agreed that it was not practical to apply the same wholesale service
28 quality standards to all ILECs given the differences in wholesale activity between
29 carriers. As the sole advocate in the workshops for CLECs interested in competing with
30 Level 2 ILECs, I was the first to propose that fewer wholesale service measures should
31 apply to Level 2 carriers. The rural CLECs that I represent are not interested in ordering
32 from Level 2 carriers the large variety of wholesale services covered in the plans
33 approved by the Commission for Verizon and Ameritech. The IRCA members that
34 compete with Level 2 Carriers are primarily facilities-based providers that only need
35 certain wholesale services in order to supplement their competitive service offerings.
36 Therefore, the IRCA did not believe it was appropriate or necessary to apply the
37 extensive wholesale service quality plans of Ameritech and Verizon to Level 2 ILECs.
38 The IRCA proposed that only four categories of wholesale services- unbundled loops,
39 resale, collocation, and interconnection trunks- be covered by wholesale service quality
40 rules in Code Part 731 for Level 2 carriers. Staff adopted this recommendation.²

41
42 **Q. Do you agree with Citizens' contention that Staff's proposed rule for Level 2**
43 **carriers is "extensive"? (Direct Testimony of Kim Harber, line 114 and Direct**
44 **Testimony of Kenneth Mason, line 371).**

45 A. No. First, there are substantially fewer measures that apply to Level 2 carriers than apply
46 to Level 1 carriers. Under Staff's proposal, there would be 24 measures³ applicable to
47 Level 2 carriers, whereas Ameritech's and Verizon's plans consist of at least 150
48 measures. (Direct Testimony of Ameritech witness James D. Ehr, line 305 and Direct
49 Testimony of Verizon witness Louis Agro, line 286) Clearly, Staff's proposal for Level 2
50 carriers is much less burdensome than that which would apply for Level 1 carriers. It
51 should also be noted that Ameritech's proposal to apply the Level 2 standards to all
52 carriers, including itself, is reflective of Ameritech's recognition that the Level 2
53 standards under Staff's proposal are less extensive than what would otherwise apply to
54 Ameritech.

55
56 Second, no other Level 2 ILEC has opposed to Staff's proposal. Gallatin River has
57 interconnection agreements with CLECs and would likely be included in Staff's
58 definition of Level 2 carriers. Yet, Gallatin River has not filed testimony in opposition to
59 Staff's proposal. In fact, the final workshop concluded with Gallatin River supporting
60 Staff's proposed rule. Illinois Consolidate Telephone Company ("ICTC") also may be
61 subject to Level 2 standards, although its distinction as a Level 2 carrier is less clear-cut
62 than the distinctions of Citizens and Gallatin River because it is my understanding that
63 ICTC does not have any interconnection agreements with other CLECs and that it may be
64 classified as a rural carrier under the Telecommunications Act of 1996. Nonetheless,

² Staff later added standards for Loss Notification and Customer Service Records.

³ 5 measures (Firm Order Commitment, Reject Notice, Provisioning, Out-of-Service Maintenance/Repair, Non-Out-of-Service Maintenance/Repair) times 4 services (Unbundled Local Loops, Interconnection Trunks, Resold Local Services, and Collocation) plus HFPL provisioning, Loss Notification UNE Platform, Loss Notification Resale, and Customer Service Record.

ICTC has not intervened in opposition to Staff's proposed rule despite the fact that certain parties have stated that the rules may apply to ICTC (See for example, Direct Testimony of Citizens witness Kim Harber at line 256). Given the lack of opposition from Gallatin River and ICTC, it can be presumed that they don't believe that Staff's proposed wholesale service quality standards for Level 2 carriers are too extensive.

Q. Why is it important that Code Part 731 include the Level 2 measures proposed by Staff?

A. As stated above, the IRCA members interested in competing with Level 2 carriers are primarily facilities-based carriers. However, overbuilding the most rural portions of some exchanges can be cost prohibitive. Therefore, in order to serve an entire exchange, CLECs may need to supplement their facility-based offerings with offerings made via unbundled loops, including corresponding collocation arrangements, and/or resold local services. As stated in my direct testimony, Staff's proposal would ensure that rural CLECs will receive wholesale services in a timely manner from Level 2 ILECs, thereby providing a more level playing field and enabling the CLECs to be in a better position to provide competitive services to rural subscribers.

Q. Much of Citizens' arguments for applying lesser standards to Level 2 carriers and allowing Level 2 carriers to file their own wholesale service quality plans is based on Citizens' assertions that they are not experiencing much wholesale activity. (Direct Testimony of Kim Harber, lines 282-285 and Direct Testimony of Kenneth Mason, lines 369-372) What is your response to these statements?

88 A. The IRCA members have incurred substantial expenses negotiating interconnection
89 agreements with Citizens, participating in Citizens' UNE/interconnection pricing
90 proceeding (ICC Docket 01-0515), and participating in the Code Part 731 workshops and
91 this proceeding in order to secure a better environment necessary to purchase wholesale
92 services from Citizens. While I cannot testify on the specific amount of wholesale
93 services that IRCA members expect to order from Citizens, I can state that the IRCA
94 would not have incurred these expenses if its members didn't anticipate purchasing
95 wholesale services from Citizens. The services covered in Staff's proposed rule were the
96 subject of extensive workshops discussions and reflect the limited numbers of wholesale
97 services that IRCA members anticipate purchasing from Level 2 carriers.

98
99 Responses to Citizens' Specific Proposals

100 **Q. Citizens proposes that Level 2 carriers be allowed to file company-specific wholesale**
101 **service quality plans that, if approved by the Commission, would allow the Level 2**
102 **carriers to be exempt from the wholesale service quality standards of Code Part**
103 **731? (Harber Direct Testimony at lines 291-461) What is your response to Citizens'**
104 **proposal?**

105 A. I object to Citizens' proposed language for company-specific plans that would allow
106 Level 2 Carriers to be exempt from the minimum wholesale service quality standards set
107 forth in Staff's proposed rule. First, it is inappropriate for Citizens to suggest that its
108 wholesale service situation is comparable to that experienced by SBC, Ameritech, GTE
109 and Bell Atlantic at the times of their respective mergers. When the Commission
110 addressed the merger proposals in Illinois (ICC Docket 98-0555 and 98-0866), the

RBOCs had already gone through performance measurement proceedings in other jurisdictions and the Commission was comfortable enough with the outcome of those other proceedings to order that the resulting wholesale service quality plans from those other jurisdictions be used as a starting point for collaborations with CLECs in Illinois. Illinois CLECs were then given an opportunity in collaborative workshops to shape the RBOCs wholesale service quality plans ultimately adopted in Illinois based on the CLECs' needs in Illinois. Citizens' proposal is not comparable to the merger orders because Citizens has not gone through similar performance measurement evaluations in other jurisdictions to allow CLECs and the Commission to be comfortable with a Citizens-specific wholesale service quality plan. In addition, Citizens' proposal does not allow for a collaborative workshop process for CLECs to evaluate and propose modifications to Citizens' proposal prior to a time-limited formal proceeding before the Commission. Therefore, CLECs competing with Level 2 carriers cannot be as assured that a company-specific Level 2 plan will meet their needs as CLECs competing with SBC and Verizon were assured that the company-specific performance plans adopted in the merger order would meet their needs. CLECs competing with Level 2 carriers already expressed their minimal needs in the workshops conducted prior to this proceeding and Staff's proposal adequately reflects those needs.⁴ Adopting Citizens proposal would merely create additional uncertainty for CLECs competing with Level 2 carriers.

⁴ Correspondingly, it can be assumed that if a Level 3 or Level 4 carrier ever loses its exemption from the wholesale service quality standards of Code Part 731, the Commission will analyze the needs of the carriers competing with

Second, Citizens' proposal creates inefficiencies because it would require Level 2 carriers and the Commission to unnecessarily incur additional expenses and waste valuable resources addressing issues that will have already been the subject of numerous workshops, testimony, hearings, and briefs. This proceeding meets the directives of the Illinois General Assembly to address wholesale quality issues in a rulemaking proceeding. If Citizens is not satisfied with the scope of the rule, it is not because of its lack of opportunities to provide alternative proposals and supporting evidence. In addition, Staff's proposed rule anticipates that Level 2 carriers will have the opportunity to propose changes during the biennial review if experience suggests that the rule adopted in this proceeding needs to be modified.

Q. Citizens proposes that unbundled loop standards be applicable only to analog loops, not digital loops, and that the loop conditioning standard be removed. Citizens states that "[i]f Staff believes that standards for provisioning digital capable loops should be included, specific conditioning processes, and longer provisioning intervals to accommodate the time frames to complete conditioning must be identified for removing bridge taps, load coils, etc. from loaded loops." What is your response to Citizens' proposals?

A. I object to Citizens proposals. CLECs competing with Citizens have expressed a need for standards applicable to loop conditioning and digitally capable loops. Staff's proposal adequately reflects the CLECs' needs and apparently provides sufficient timeframes for other Level 2 carriers given their lack of opposition to Staff's proposal. Citizens'

the former Level 3 or Level 4 carrier and only apply the wholesale service quality standards to the formerly exempt

proposal to reject standards outright without offering an alternative proposal is reflective of the tactics Citizens used throughout the workshops. Rather than proactively addressing their concerns through compromise solutions, Citizens believes it is sufficient to merely reject proposals of others out of hand and let the other parties attempt to solve the ambiguous and shifting concerns of Citizens. Unlike Gallatin River, which actively attempted to shape the standards in the rule based on their concerns and discussions with the IRCA, Citizens has merely thrown up objections without offering a solution. Citizens has been given numerous opportunities to provide a solution to its concerns and has yet to do so. Therefore, I recommend that the Commission reject Citizens proposals to limit the rule to analog loops and to remove the standards that apply to loop conditioning and digitally capable loops.

Q. Citizens proposes to eliminate collocation from the services covered by Code Part 731 because “the FCC has released very specific standards and requirements associated with collocation” and certain Staff proposals “are potentially inconsistent with FCC rules.” (Mason Direct Testimony at lines 389-390 and line 446, respectively) What is your response to Citizens’ proposals regarding collocation?

A. I object to Citizens’ proposals to eliminate collocation from the list of wholesale services covered under Code Part 731. First, I believe that the activities and timeframes associated with collocation under Staff’s proposed Code Part 731 are consistent with the FCC rules because those are the standards upon which Staff’s proposals are modeled. If Citizens believes that there are various nuances between the two rules that could cause

carrier that meet the needs of the competing carriers.

176 interpretation problems, Citizens should propose language to fix the rule rather than
177 outright rejecting inclusion of collocation services in the rule.

178
179 Second, while the timeframes included in Staff's proposed rule are already covered in the
180 FCC's rules, there are no remedies associated with failure to comply with the FCC's
181 timeframes. Therefore, Staff has appropriately established remedies for the FCC
182 timeframes in order to provide further incentive for Level 2 carriers to comply with those
183 timeframes consistent with requirement for standards and remedies in Section 13-712(g)
184 of the Public Utilities Act.

185
186 **Q. In order to address potential CLEC concerns regarding Citizens' proposals to**
187 **remove certain services from Code Part 731, Citizens proposes language that would**
188 **allow a CLEC "to petition the Commission to expand the wholesale measures**
189 **applicable to a specific Provisioning Carrier." (Mason Direct Testimony, lines 502-**
190 **504) What is your response to Citizens' proposal?**

191 **A.** I object to Citizens proposal to include its language on lines 973-997 of Attachment 1.1
192 of Mr. Harber's testimony as a substitute for the removal of services from the proposed
193 rule. Staff's proposed rule already reflects a minimal set of core services that IRCA
194 members anticipate ordering. Removing additional services would result in an
195 insufficient breadth of coverage. Citizens' attempt to alleviate the concerns of CLECs is
196 inadequate because it would mean that a carrier would first have to experience poor
197 service and then have to incur substantial legal and regulatory expenses in an attempt to
198 get the Commission to fix the problem on a going-forward basis. Citizens' proposal does

not include a remedy for the problem the CLEC already experienced. The appropriate course of action is the one proposed by Staff for the Commission to establish measures based on its current estimate of the appropriate standards for the types of services CLECs are interested in purchasing given input from ILECs and CLECs and then establishing a biennial review to address issues that were not known at the time the rule was established. If none of the services covered under Staff's proposal are removed from CP 731, then I am unopposed to the inclusion of Citizens' proposed petition language in the rule.

Q. Citizens proposes that “the Commission establish wholesale service thresholds that must be met before the wholesale measures and remedies in the proposed Part 731 Rules apply.” (Mason Direct Testimony, lines 567-569) What is your response to Citizens’ threshold proposal?

A. I object to Citizens' threshold proposal. First, I take issue with Citizens statements in support of its proposal that it is “administratively unreasonable to subject a Level 2 Carrier” to Staff's proposed wholesale service quality measures given the historically low volume of wholesale activity for Level 2 carriers. (Mason Direct Testimony, line 558) Level 2 carriers have wholesale obligations today under Section 251(c) of the Act for the services addressed in Staff's proposed Code Part 731. Therefore, these carriers should be prepared to offer the services addressed in the rule. In addition, Level 2 ILECs have interconnection agreements for these services, some of which contain forecasting language that helps prepare the Level 2 ILECs for fluctuations in CLEC demand. Thus,

Level 2 ILECs should have systems in place and be prepared for CLEC orders for the minimal number of services covered in Staff's proposed rule for Level 2 carriers.

Second, the thresholds proposed by Citizens are subject to volatility and may lead to a process that is unduly complex while providing virtually no assurance of service quality standards for CLECs competing with Level 2 carriers. This is because the threshold exemption proposed by Citizens may result in on-again off-again performance standards. For example, Citizens proposes a threshold of 25 orders per quarter for unbundled local loops. Suppose that Citizens received 30 unbundled loop orders in Quarter 1, 10 unbundled loop orders in Quarter 2, and 40 unbundled loop orders in Quarter 3. In this scenario, Citizens would be obligated to receive an exemption from remedy requirements in Quarter 2 but would be obligated to pay remedies for missed standards in Quarter 1 and 3. This proposal creates uncertainty for CLECs purchasing unbundled loops because the threshold exemption is based on *total* unbundled loop orders for *all* CLECs. Thus, the quality of wholesale service provided to a CLEC is dependent on the orders of all other CLECs. The same CLEC could have submitted 10 orders in all three quarters in the above scenario but would not be eligible to receive credits for missed standards in Quarter 2 because no other CLEC submitted at least 15 unbundled loop orders. In addition, it would be impossible for any CLEC to ever know whether Citizens was subject to a quality standard because no one CLEC would know whether the *total* orders received by Citizens exceeded the threshold. Citizens' proposal is unduly complicated and would create unnecessary confusion. Therefore, I recommend that the Commission reject the threshold exemption language proposed by Citizens.

244
245 **Q. Citizens proposes remedy language that would allow Level 2 carriers to miss the**
246 **wholesale service quality standards some of the time because “it is not appropriate**
247 **to establish standards that Level 2 Carriers must achieve 100% of the time.”**
248 **(Mason Direct Testimony, lines 630-631) What is your response to Citizens’**
249 **proposal to limit the instances for which a remedy applies?**

250 A. I object to Citizens’ proposal to limit the instances for which a remedy applies. As with
251 Citizens’ proposed threshold exemption, this proposal would provide a CLEC with
252 virtually no assurance as to the level of wholesale service quality it can expect to receive
253 because the quality of wholesale service provided to a CLEC would be dependent upon
254 the orders of all other CLECs. For example, under Citizens’ proposal, Level 2 carriers
255 would have to provision 90% of *total* unbundled loop orders within 10 days. Suppose
256 two CLECs each ordered 50 loops in one-month period. Assume CLEC A received 40 of
257 its 50 loops within 10 days and CLEC B received 49 of its 50 loops within 10 days. So,
258 under this scenario, the Level 2 carrier is obligated to pay remedies because it only
259 provisioned 89% $((40+49)/100)$ of its loops within 10 days. But to which CLEC would
260 the remedies be paid? Would the remedies apply for all 11 loops that weren’t
261 provisioned on time or for only the 1 loop that caused the Level 2 carrier to miss the 90%
262 standard? And again, if the remedies only apply to 1 loop, which CLEC gets the remedy?
263 Citizens has not addressed these issues so the full ramifications of its proposal are
264 unclear. Suppose also that CLEC B received all 50 of its loops on time while CLEC A
265 still only received 40 loops on time. Under this scenario, the Level 2 carrier would not be
266 obligated to pay remedies because it would have met the 90% *total* standard despite the

fact that CLEC A would have only received 80% of its loops on time. So, despite the poor service quality it received, CLEC A may only receive a remedy if the wholesale service quality provided to another carrier was just bad enough to put the total performance below the 90% standard. But even then, it is not clear under Citizens' proposal whether CLEC A would ever receive a remedy for a Level 2 carrier's poor performance.

In addition, as I mentioned above with respect to the threshold proposal, if Citizens suggestion is accepted, no one CLEC could ever determine whether Citizens is complying with the Commission's wholesale service quality rules. Citizens could comply with the performance measure 80% of the time for one CLEC, but that CLEC would not know whether the quality standard was met because only Citizens would have knowledge of its aggregate performance for all CLECs.

Given the uncertainty associated with the level of performance and remedies a CLEC can expect under Citizens' proposal, I recommend that the Commission reject Citizens' proposal. Staff's wholesale proposal is consistent with the less complex, hit-or-miss, retail standards established Section 13-712 of the PUA.

Q. Citizens proposes to increase some of the timeframes for provisioning services. (Mason Direct Testimony, lines 732-733) What is your response to Citizens' proposal?

289 A. I am opposed to any increase in the timeframes associated with the provision of
290 unbundled local loops and resold local services. Staff's proposed timeframes were the
291 subject of substantial negotiation in the workshops and Citizens has not provided any
292 evidence in its testimony to support its proposal to lengthen the timeframes.⁵ In addition,
293 as explained in my direct testimony, there would still not be a level playing field between
294 ILECs and CLECs under Staff's proposed Code Part 731 because end users should
295 receive local service from CLECs within 8 business days and from ILECs within 5
296 business days given the requirements under Staff's proposal and the existing Code Part
297 732. (Hendricks Direct Testimony, lines 74-92) Citizens' proposal would exacerbate the
298 problem. Therefore, I recommend that the Commission reject Citizens' proposals to
299 extend the timeframes for provisioning unbundled local loops and resold local services.

300
301 **Q. Does this conclude your testimony?**

302 A. Yes.

⁵ It should be noted that it is not clear if Citizens is proposing to increase the timeframes for unbundled loops and resold services because in Mr. Mason's direct testimony, his proposed timeframe is 10 days for unbundled loops and resold services (lines 677 and 679) whereas Attachment 1.1 to Mr. Harber's testimony shows no changes (lines 1061 and 1063) to the 5 day time proposed by Staff.